

D. GEORGE SWEIGERT
GENERAL DELIVERY
NEVADA CITY, CA 95959

April 16, 2021

District Judge Valerie E. Caproni
U.S. District Court
500 Pearl Street
New York, New York 10007-1312

SUBJ: Request review of Magistrate's decision concerning stay of discovery
1:18-cv-08653-VEC-SDA

Ref: (a) ECF doc. No. 239
(b) New York State Civil Rights Law Sec. 76(a)(1)(a)
(c) New York C.P.L.R. 3211(g)
(d) ECF doc. No. 246

Your Honor,

1. The Defendant in this action has filed an Anti-SLAPP motion, ref: (a). The New York State Anti-SLAPP law requires an automatic stay of discovery when such a motion is filed; ref: (b) and (c).

2. On November 10, 2020, Governor Cuomo signed into law an amendment to the New York anti-SLAPP law. In what appears to be the only case addressing the issue, on December 29, 2020, Judge Rakoff considered the application of the newly amended New York anti-SLAPP law. In *Palin v. New York Times Co.*, No. 17-CV-4853 (JSR), 2020 WL 7711593, at *3 (S.D.N.Y. Dec. 29, 2020), the Court held:

It is undisputed that § 76-a requires public figures, like plaintiff, to prove actual malice by clear and convincing evidence. It is also undisputed (albeit by virtue of neither party having raised the issue) that a federal court sitting in diversity must apply § 76-a because it is a substantive, rather than a procedural, provision. See *Adelson v. Harris*, 774 F.3d 803, 809 (2d Cir. 2014) (affirming the district court's application of certain substantive provisions of Nevada's antiSLAPP law); see also *La Liberte v. Reid*, 966 F.3d 79, 86 n.3 (2d Cir. 2020) (distinguishing between the applicability in federal court of substantive and procedural elements of state anti-SLAPP laws). The only question here is whether § 76-a should be given retroactive effect to this action, which was filed before the amendments took effect but has not yet gone to trial. . . . [emphasis added]

3. By MEMO ENDORSEMENT, it was adjudged, in light of the Anti-SLAPP motion (ref: (a)), that discovery deadlines for this lawsuit were still in effect (“The discovery deadlines in this action remain in effect” [ref: (d)]). The Plaintiff believes this decision is in error as ref: (b) declares an automatic stay of discovery.

4. The Plaintiff earnestly urges the District Judge to review the issue of the applicability of ref: (b) to these proceedings. The Plaintiff urges the District Court to immediately issue a stay of proceedings until the matter of ref: (b) applicability is resolved.

Respectfully,



D. Geo. Sweigert

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CERTIFICATE OF SERVICE

The undersigned hereby attests under penalties of perjury that copies of this communication have been sent via electronic mail message to the following parties on the sixteenth (4/16) day of April, two thousand and twenty-one (2021).

Clerk of the Court, Room 200 temporary_pro_se_filing@nysd.uscourts.gov	Jason Goodman, CEO truth@crowdsourcethetruth.org
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Pro Se Non-Attorney

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